

In the Supreme Court of  
the United States

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No. ....

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THE EVANGELICAL LUTHERAN SYNOD OF KANSAS AND  
ADJACENT STATES, a Corporation,  
*Petitioners,*

VERSUS

FIRST ENGLISH LUTHERAN CHURCH of Oklahoma City, a  
Corporation; FRED H. BLOCH, as Pastor Pretendant of  
such Church; and E. C. DOERR, J. H. WINNEBERGER,  
ALBERT SWANSON, STANLEY HOMER, WALTER QUICK,  
A. E. ROSENTHAL, V. H. SMITH, and S. C. HOSHUR, as  
Members of the Board of Deacons and Trustees,  
*Respondents.*

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**BRIEF IN SUPPORT OF PETITION  
FOR WRIT OF CERTIORARI**

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**OPINIONS OF COURTS BELOW**

The opinion of the District Court of the United States  
for the Western District of Oklahoma is reported in 47  
Fed. Supp. 954. The opinion of the Circuit Court of Ap-  
peals for the Tenth Circuit is reported in 135 Fed. (2d)  
701.

## **JURISDICTION**

The judgment of the Circuit Court of Appeals was entered May 19, 1943. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## **STATEMENT**

This is a suit brought by the Petitioner, The Evangelical Lutheran Synod of Kansas and Adjacent States, a corporation, hereinafter referred to as "Kansas Synod", against the Respondents, the First English Lutheran Church of Oklahoma City, a corporation, hereinafter referred to as "City Church", its pastor, and certain individuals as members of the Board of Deacons and Trustees, to obtain a permanent injunction preventing the Respondents from exercising any control over the City Church property, which consists of the church building and parsonage, and from affiliating the City Church with the Midwest Synod; from paying over any money to the Midwest Synod, and from interfering with those members of the congregation of the City Church who remain loyal to the Kansas Synod in their use of the City Church property (R. 3-22).

The Kansas Synod is a District Synod within the United Lutheran Church in America, a national organization adhering to the Lutheran Faith, and has jurisdiction

over a number of Lutheran congregations within the States of Kansas, Oklahoma and Missouri. The City Church is a congregation established under the jurisdiction of the Kansas Synod in 1902, and has since its inception until 1942 complied with the constitution and laws of the Kansas Synod. In 1942 the congregation of the City Church became divided and at a congregational meeting a plurality of the members present and voting adopted a resolution withdrawing the City Church from the Kansas Synod and affiliating it with the Midwest Synod, another District Synod within the United Lutheran Church in America (R. 43).

Notice of the passage of this resolution was given to the Kansas Synod, which passed a resolution refusing to recognize the action of the congregation of the City Church and refusing to give its consent to the withdrawal (R. 11-12); and by resolution the Kansas Synod suspended the pastor of the City Church and declared those members of the congregation who opposed the withdrawal to be the lawful congregation of the City Church, and instructed said congregation so recognized to call a minister to conduct worship (R. 12-18). These resolutions were served upon the individual Respondents who refused to relinquish possession of the church building and parsonage, and this suit was instituted.

By their answer the defendants urged two grounds as their defense: (1) That the City Church had the right to withdraw from the Kansas Synod without its consent, and (2) that the Commission of Adjudication of the United

Lutheran Church in America had held that the withdrawal of the City Church from the Kansas Synod was legal (R. 40-46).

The case was tried on stipulation of facts and the testimony of two witnesses, and the district court held that the Kansas Synod was entitled to an injunction as prayed for (R. 69-99). But by subsequent order the court provided that each faction of the congregation of the City Church have exclusive possession of the church building during alternate weeks, pending appeal (R. 100-102).

The respondents appealed to the Circuit Court of Appeals, and as grounds for reversal of the judgment urged that, (1) it was not necessary for the City Church to have the consent of the Kansas Synod for it to withdraw, and (2) that the Commission of Adjudication of the United Lutheran Church in America (the highest court within the church) had decided that the withdrawal was legal (R. 1-2).

The Circuit Court of Appeals on its own motion held that the Kansas Synod had no beneficial interest in the property of the City Church, and that the City Church was under no obligation to make payments to the Kansas Synod, and that the Kansas Synod had no right to maintain the action for injunction. It reversed the judgment of the district court and remanded the case with instruction to dismiss.

### **SPECIFICATION OF ERRORS**

1. The Circuit Court of Appeals erred in assuming, contrary to the evidence, that the City Church is an independent congregation and not bound by the constitution, orders and judgments of the Kansas Synod.
2. The court erred in holding that because title to the City Church property is held in the name of the City Church, a corporation, that the Kansas Synod has no beneficial interest therein.
3. The court erred in holding that the City Church is under no legal or actionable obligation to make payments for benevolences to the Kansas Synod.
4. The court erred in holding that the Kansas Synod cannot maintain this action.

### **SUMMARY OF ARGUMENT**

The Circuit Court of Appeals held (R. 107-110) that title to the City Church property was held in the name of the City Church, a corporation, and the Kansas Synod has no beneficial interest therein; that the City Church, although it has for many years made payments to the Kansas Synod for benevolences, is under no legal or actionable obligation to continue to make the same, and therefore the Kansas Synod has no right to maintain this action to prevent the diversion of the City Church property to another Synod within the United Lutheran Church in America.

The City Church is not independent, but is an integral

part of a much larger and more important religious organization called the "United Lutheran Church in America", which Church is governed by three judicatories which rise in regular succession from the Council of the City Church, which is the lowest judicatory within the United Lutheran Church in America; the Kansas Synod, which has jurisdiction over several churches within its territorial jurisdiction, and the General Synod of the United Lutheran Church in America, which has jurisdiction over all of the Synods within the organization. The City Church property is not limited by any trust, but was purchased by the City Church for the general use of the religious congregation. Although the title is vested in the City Church, a corporation, it does not belong to the City Church; but it belongs to the entire membership of the United Lutheran Church in America. The ultimate right of ownership and control over the City Church property is vested in the judicatories established by the organic law of the United Lutheran Church in America; and the Kansas Synod, under the organic law of said Church, being the superior judicatory having direct and supervisory jurisdiction over the City Church, has the right of ownership and control over the City Church property.

- Watson v. Jones*, 13 Wall. 679, 20 L. ed. 666;  
*Shepard et al. v. Barkley et al.*, 247 U. S. 1;  
*Helm v. Zarecor*, 222 U. S. 32;  
*Purcell et al. v. Summers et al.*, 126 Fed. (2d)  
390.

*Trustees of the Presbytery of New York v. Westminster Church of West Twenty-third Street et al.*, 127 N. Y. Supp. 851;

*Presbytery of Huron et al. v. Gordon et al.*, 300 N. W. 33.

The Kansas Synod, having the right to the use and control of the City Church property, has the right to maintain an action to prevent its diversion from use to which it is dedicated under the organic law of the Church. It being admitted that the City Church property is of the value of \$65,000.00 and diversity of citizenship exists between the Kansas Synod and the respondents, the Federal Court has jurisdiction.

Under the constitution of the Kansas Synod, the City Church, as a subordinate body within the Kansas Synod, is under a duty to make payments to the Kansas Synod for benevolent functions of the Kansas Synod, and the Synod has the right to compel such payments by an action at law. It being admitted that such payments over a five-year period would amount to in excess of \$7,000.00, the Federal Court has jurisdiction.

In holding that the Kansas Synod had no right that would be violated by a diversion by the City Church of its property from the Kansas Synod, and that the City Church was under no legal or actionable obligation to make payments to the Kansas Synod for benevolences, the Circuit Court of Appeals wholly disregarded the constitutional provisions of the City Church, the Kansas Synod, and the United Lutheran Church in America, and, in ef-

fect, held that the City Church was independent of any control by the Kansas Synod.

### **ARGUMENT**

**The City Church is not an independent organization, but is a member of a much larger and more important religious organization, and is under its government and control.**

At the trial of this case it was stipulated that the constitutional provisions set forth in plaintiff's brief might be considered in evidence (R. 50-51). These constitutional provisions are set forth in the opinion of the trial court (R. 80-84), and reference to these provisions conclusively show that the City Church is not an independent religious organization, but is an integral part of the federated, associated or presbyterial form of church organization known as the United Lutheran Church in America.

The Constitution of the United Lutheran Church in America provides (R. 80-81):

"Article VI, Section 6. To foster and develop the work of Synods, to exercise a general supervision of the Church, and on appeal of Synods to give counsel and to adjudicate questions of doctrine, worship and discipline.

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"Article VIII, Section 2. As to Internal Relations. The United Lutheran Church in America shall have power to deal with internal matters that affect all its constituent Synods or the activities of The United Lutheran Church as a whole, except that when the operation of such power takes place within the domain of any of the Synods their consent and cooperation must first be secured.

"Section 6. As to the Maintenance of Principle and Practice. The United Lutheran Church in America shall protect and enforce its Doctrinal Basis, secure pure preaching of the Word of God and the right administration of the sacraments in all its Synods and congregations. It shall also have the right, where it deems that loyalty to the Word of God requires it, to advise and admonish concerning association and affiliation with non-ecclesiastical and other organizations whose principles or practices appear to be inconsistent with full loyalty to the Christian Church, but the Synods alone shall have the power of discipline.

"Article XIV. Section 1. No Synod in connection with the United Lutheran Church in America shall alter its geographical boundaries without the permission of the general body.

"Section 2. Synods shall give advice to their ministers and congregations concerning doctrine, life and administration, and shall exercise such disciplinary measures as may be necessary.

"Section 3. The Presidents of Synods shall exercise an oversight of the pastors and congregations composing their respective Synods, and shall be charged with the duty of carrying out the rules and regulations adopted by the Synods. When requested by the Executive Board they shall appear before it to represent their Synods. They may also make suggestions to the Executive Board, or seek its advice, with respect to the conditions and work in their Synods."

The Constitution of the Kansas Synod provides (R. 81-83):

"Article One, Section 3, subsection 1. This Synod shall consist of ministers and congregations in unity with the Doctrinal Basis in Section 2 received into membership as hereinafter provided.

"Subsection 2. Any Evangelical Lutheran minister applying for admission into this Synod and accepting this constitution with its Doctrinal Basis and who holds a letter of honorable dismissal from the President of the Synod from which he comes may upon recommendation of the Examining Committee be received into membership.

"Subsection 3. Any congregation located within or contiguous to the natural bounds of the territory of this Synod may upon the approval of the Executive Committee of Synod be received into membership by a majority vote at any regular convention.

"Subsection 4. Every congregation shall be faithful to its obligations to this Synod in all matters of support, practice, and Church government.

"Section 4, subsection 7. To ordain fitted men for the Holy Office of the ministry of the Gospel; and to suspend and depose those who dishonor it by false teaching, by insubordination, or an unworthy or wicked life.

"Subsection 8. To maintain discipline unto the fostering of holiness and fidelity in the ministry and people.

"Article Six, Section 1. 1. All applications for ordination shall be made to the President and referred by him to the Examining Committee which shall report on the same to the Synod and upon the recommendation of a two-thirds vote of the Synod may become members of this Synod.

"2. Every minister received into the Synod and every candidate who is ordained shall subscribe to this Constitution prior to admission into membership.

"Section 2. 1. A congregation desiring admission into the Synod shall place into the hands of the President a formal application signed by the Secretary of the Church Council and by the pastor, and shall send a representative to the meeting of the Synod; it shall submit a copy of its Constitution, and of its Charter, if Incorporated. If these are in accord with the requirements of the Constitution of the Synod, the congregation may be received into membership by a majority vote of the Synod at any regular meeting. Contemplated changes of its Constitution affecting its articles of faith, adherence to the Synod, and the United Lutheran Church in America, and disposition of its property, shall be reported to the President for his approval.

"Article Eight. 1. It shall be the duty of the Church Councils of every pastorate belonging to the Synod to appoint annually from its communicant members in good standing a lay delegate who shall represent the pastorate at all meetings of Synod and of Conference and submit his report to the pastorate; and the congregation or pastorate shall arrange to pay his and their pastor's expenses incurred by their full attendance upon such meetings. It may also appoint an alternate to take the place of the regular delegate in his absence.

"2. Every congregation belonging to the Synod, as it has a share in all its acts and supervisions, shall comply with the Constitution, By-Laws, decisions and recommendations of the Synod and local Conference, and conform to its public worship and ministrations

to the order used by the United Lutheran Church in America and approved by the Synod. It shall observe and make systematic effort to meet at least the apportionment for all objects to the Treasurer of Synod, and afford to all its members a regular channel of contributions for the benevolent operations of the church, the minimum amount being indicated by a budget of apportionment by Synod to the congregation. It shall make earnest effort to pay such amounts into the Synodical Treasury in monthly installments. It shall make due and liberal provisions for the ministration of the Word and the Sacraments, endeavor to hold at least one service every Lord's Day and see that the pastor is properly supported; and make all necessary provision for the promotion of piety in its families and for the Christian training of the young.

"3. In cases of vacancy, difficulty or strife in a congregation the Church Council shall seek the advice and instruction of the President of Synod.

"4. In case of strife or division, should any part of a congregation or pastorate belonging to the Synod reject the faith set forth in Article One, Section II, or revolt against the Constitutional provisions or its obligations as a member of the Synod, that part of the congregation or pastorate, whether majority or minority, of its membership which continues in unity with the Synod and its faith shall be recognized as the lawful congregation or pastorate.

"5. No congregation shall make any enactments in conflict with this Constitution or with the accepted regulations of the United Lutheran Church in America.

"6. Should a pastor resign, the Church Council

shall receive the letter of resignation and at once report the fact to the President of Synod."

The Constitution of the First English Lutheran Church of Oklahoma City provides (R. 83-84):

"Article II. It's Doctrinal Basis, and Formula of Government and Discipline, shall be those of the General Synod of the Evangelical Lutheran Church in the United States of America, and it shall always be connected with a District Synod of the General Synod.

"Article III. Section 2. Every church-member is amenable to the Council, and must appear before them when cited, and submit to the discipline of the church regularly administered.

"Section 3. It is the duty of every church-member to lead a Christian life; that is, to perform all the duties required of him or her in Scripture. Thus it is the duty of adults to perform all the Christian Duties; to attend the public worship of God, and to partake of the Lord's Supper whenever an opportunity is afforded. It is the duty of parents to educate their children in the nurture and admonition of the Lord, to teach them the doctrine of the church, and to subject them to the ordinances of the same.

"Article IV. Section 3. Pastors are amenable for their conduct to the Synod to which they belong; and that Synod is the tribunal which has the entire jurisdiction over them; excepting in those cases where a regular appeal is obtained to the General Synod, agreeably to Article IV, Section 8, of the Constitution of the General Synod.

"Article VI. Section 1. The Church Council is the lowest judicatory of the Church, consisting of the

pastor, or pastors, and all the elders and deacons of a particular church.

"Section 12. In all cases of appeal from the decisions of the Church Council, the Council shall take no further measures grounded on their decision until the sentence has been reviewed by the Synod. But if the decision appealed from be a sentence of suspension or excommunication, it shall immediately take effect and continue in force until reversed by the Synod. And in every case of appeal, the Church Council shall send a detailed and correct account of the proceedings in the case, and of the charges and evidence on both sides.'

When these constitutional provisions of the respective organizations are considered, no other conclusion can be reached than that the United Lutheran Church in America is governed by three judicatories: The Council of individual congregations, the District Synod, and the General Synod; the District Synod having entire jurisdiction over the ministers and the entire jurisdiction over the congregations, and the General Synod having jurisdiction over the Synods.

Congregations within the United Lutheran Church in America have been before the courts on two occasions. In *Nagle et al. v. Miller et al.*, decided by the Supreme Court of Pennsylvania in 1922, 118 Atl. 67, and in *First English Evangelical Lutheran Church of Los Angeles et al. v. Dysinger et al.*, decided by the District Court of Appeal of California in 1931, 6 Pac. (2d) 522; second appeal, decided in 1934, 30 Pac. (2d) 545, and in both of these cases the court held that the local congregation was subject

to the jurisdiction, orders and judgments of the Synod.

Throughout this litigation the Respondents have relied upon the decision of the Commission of Adjudication of the United Lutheran Church in America (R. 35-40) for their authority to withdraw from the Kansas Synod without its consent, and at all times the Respondents have recognized the jurisdiction of the Commission of Adjudication, which is the highest court within the United Lutheran Church in America.

The Circuit Court of Appeals completely ignored the constitutional provisions set forth herein and assumed, without deciding, that the City Church was independent of control by any superior judicatory within the Church, and basing its opinion upon this assumption, held that the Kansas Synod had no beneficial interest in the property of the City Church and that the City Church was under no legal or actionable obligation to make payments to the Synod.

A similar situation was passed on by this Court in *Watson v. Jones*, 13 Wall. 679, 20 Law ed. 666, where the action was defended on the ground that the plaintiffs had no such interest in the subject of the litigation to enable them to maintain the action. This Court, in disposing of the contention, made the following statement (p. 671):

"The allegation that the plaintiffs are not lawful members of the Walnut Street Church is based upon the assumption that their admission as members was by a pastor and elders who had no lawful authority to act as such. As the claim of those elders to be such is one of the matters which this bill is brought to

establish, and the denial of which makes an issue to be tried, it is obvious that the objection to the interest of the plaintiffs must stand or fall with the decision on the merits, and cannot be decided as a preliminary question. Their right to have this question decided, if there is no other objection to the jurisdiction, cannot be doubted."

It is submitted therefore that the Circuit Court erred in assuming that the City Church is an independent religious society, but that the question as to the status of the City Church within the United Lutheran Church in America is a question going to the merits of the controversy, and Petitioner is entitled to a decision on that question.

**The Kansas Synod as a Superior Church Judicatory has a beneficial interest in the property of the City Church.**

The decision of the Circuit Court in holding that because title to the property of the City Church is held in the name of the City Church, a corporation, the Kansas Synod has no beneficial interest therein, is in conflict with the principles laid down by this Court in *Watson v. Jones, supra*. In that case the action was instituted in the United States District Court by certain members of the Walnut Street Presbyterian Church of Louisville, Kentucky, who were citizens of Indiana, against the Trustees and others of said Church, who were citizens of Kentucky, alleging that the plaintiffs were members in good standing of the Church and that it had been ever since its organization a part of the Presbyterian Church of the United States, which was governed by a written constitution, and that

the governing bodies of the General Church were, in successive order, the Presbytery of Louisville, the Synod of Kentucky, and the General Assembly of the Presbyterian Church of the United States, and that the defendants, together with others, had seceded from the General Church and had voluntarily connected themselves with another religious society and had repudiated and renounced the authority and jurisdiction of the various judicatories of the Presbyterian Church of the United States, and plaintiffs prayed for an injunction and to obtain possession of the Walnut Street Church property. The Court, after reviewing the facts, used this language:

"But the third of these classes of cases is the one which is oftenest found in the courts, and which, with reference to the number and difficulty of the questions involved, and to other considerations, is every way the most important.

"It is the case of property acquired in any of the usual modes for the general use of a religious congregation which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government.

"The case before us is one of this class, growing out of a schism which has divided the congregation and its officers, and the presbytery and synod, and which appeals to the courts to determine the right to the use of the property so acquired. Here is no case of property devoted forever by instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, or any peculiar form of worship, but of property purchased for the use of a religious congregation, and so long

as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property. In the case of an independent congregation we have pointed out how this identity, or succession, is to be ascertained, but in cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments. There are in the Presbyterian system of ecclesiastical government, in regular succession, the Presbytery over the session or local church, the Synod over the Presbytery, and the General Assembly over all. These are called in the language of the church organs, 'judicatories,' and they entertain appeals from the decisions of those below, and prescribe corrective measures in other cases.

"In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."

It follows from the principles laid down by this Court in the above case the City Church is not free to use its property according to its whim or fancy, but is controlled in the use of the property by the superior judicatories within the Church.

In the case of *Barkley et al. v. Hayes et al.*, and *Synod of Kansas of the Presbyterian Church in the United States of America et al. v. Missouri Valley College et al.*, decided by the United States District Court for the Western District of Missouri, Western Division, in 1913, 208 Fed. 319, which was affirmed by the Circuit Court of Appeals for the Eighth Circuit in *Duvall et al v. Synod of Kansas, etc.*, 222 Fed. 669, and affirmed by this Court in *Shepard et al. v. Barkley et al.*, 247 U. S. 1, in determining the rights of control of church property within the Presbyterian Church, which has an almost identical church government as that existing within the United Lutheran Church in America, the Court said:

"In resolving the many questions presented, some of which meet us at the threshold of the case, it will aid materially if we first determine the essential character of Presbyterian—and by this I mean also Cumberland Presbyterian—property; how it is held, by and for whom, and in what such Presbyterian property rights consist. In this church the religious congregation or ecclesiastical body holding the property is but a subordinate member of the general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control, more or less complete, in some supreme judiciary over the whole membership of that general organization. The local congregation is itself but a member of a much larger and more important religious organization, is under its government and control, and is bound by its orders and judgments. Therefore, when the property held by the church is that purchased or conveyed for the general use of the religious congregation, not devoted forever by the in-

strument which conveyed it nor by any specific declaration of its owner to the support of any special religious dogmas, or any peculiar form of worship, it is and remains the property of the general church which exercises such general and ultimate power of control. It does not belong to the particular congregation which uses it, much less to the individual members of such a congregation. It does not belong to the presbytery or the synod, nor, in a strict sense, to the general assembly. It belongs to the church which is composed of its entire membership; that membership being governed and controlled by the organic law of the church, the administration of which is lodged in certain judicatories rising, in regular succession, to the general assembly or court of last resort, embracing in itself legislative, administrative, and judicial powers. The government of the Presbyterian Church is republican and representative in character. Its administration is vested, not in the individual members, not in the congregations, but in the general assembly and the presbyteries; and the church as a whole, acting through its supreme governing bodies, exercises the ultimate rights of ownership and control over all its properties."

The Circuit Court of Appeals in its opinion wholly failed to consider the holding in the cited case.

In *Trustees of the Presbytery of New York v. Westminster Church of West Twenty-third Street et al.*, decided by the Appellate Division of the Supreme Court of New York in 1911, 127 N. Y. Supp. 851, which case was cited in the *Barkley et al. v. Hayes et al.*, opinion, *supra*, the local congregation attempted to sell its property without the consent of the Presbytery, which consent was nec-

essary under the organic law of the Presbyterian Church. The Presbytery brought the action to enjoin the local church from so conveying its property, and the Court used this language in its syllabus:

"Where an incorporated church of the Presbyterian denomination and its trustees have no right to sell the church property or to apply to the court for leave to sell without consent of the Presbytery, having ecclesiastical jurisdiction over the church, the Presbytery may enjoin the church and its trustees from prosecuting a proceeding for a sale of the church property and from instituting other like proceedings, independent of the question as to whether the Presbytery is entitled to have the premises conveyed to it."

The Circuit Court of Appeals wholly failed to give any consideration to the decision of the Circuit Court of Appeals, Fourth Circuit, in *Purcell et al. v. Summers et al.*, decided March 1942, 126 Fed. (2d) 390, which sustained the United States District Court for the Eastern District of South Carolina, Columbia Division, in its opinion rendered on July 25, 1940, 34 Fed. Supp. 421, as to the right of the plaintiffs to maintain the action, but reversed the trial court upon other grounds. This was a suit brought by eight Bishops of the Methodist Church, an unincorporated society, on behalf of themselves and all members of said Church against the defendants, who were officers and members of an unincorporated society holding itself out to be the South Carolina Conference of the Methodist Episcopal Church, South, to obtain a declaratory judgment determining the validity of a union of the Methodist Episcopal Church, the Methodist Episcopal Church, South,

and the Methodist Protestant Church, into a unified organization known as the Methodist Church. The South Carolina Conference of the Methodist Episcopal Church, South, refused to recognize the union, and defended the action on the specific ground that there were no property rights involved, and the only issue was one of an ecclesiastical nature. The Court, passing upon this specific question, held as follows:

"We think that the lower court correctly held that the complaint presented a controversy justiciable in the courts and that the amount necessary to federal jurisdiction was involved. The questions involved in the case are not mere points of theology or church organization, but questions upon which property rights of great magnitude are dependent. Each of the Christian bodies which united for the formation of the Methodist Church owned valuable rights in property and had rights of great monetary value in their names and in the organizations which they had built up. The allegation of the bill is that the net value of the property owned by the Methodist Church as a result of the union exceeds \$656,000,000; that it has permanent funds of over \$14,000,000 and annuity funds of over \$7,000,000; that its current askings for foreign missions exceed \$3,900,000 and for home missions \$2,500,000; that during the past twelve months it has raised for ministerial support and other purposes a sum in excess of \$80,000,000; and that it has a membership of approximately 7,800,000, with 139 educational institutions, 83 hospitals and many other properties. It is further alleged that the value of the properties owned by the Methodist Episcopal Church, South, prior to the union was \$400,000,000, that the value of local church buildings belonging to that church in the state of South Carolina was in excess

of \$7,000,000, that these properties were held by trustees, boards, corporations, commissions and other agencies for the benefit of the church and its members, and that as a result of the union of the churches these properties are held for the benefit of the united church and its members and the religious and charitable undertakings in which they are engaged. The contention of defendants is that the legal ownership of these properties is not in the church or its membership but in various boards, trustees, commissions and corporations, but this does not meet the question involved; for plaintiffs contend that, while legal title to the properties is held by the boards, trustees, commissions and corporations, the right to the beneficial use of the properties is in the church organization for the religious and charitable purposes which it has undertaken, and that the right of control over them depends upon the validity of the union into which the three churches have entered, since the trustees, boards, commissions and directors of corporations are appointed by the church through its proper governing agencies. Even in the case of property held in trust for local congregations, the contention of plaintiffs is that the trustees hold it for that part of the congregation which adheres to the united church. See Zollman on American Church Law, par. 548. There can be no question, therefore, but that in asking an adjudication of the validity of the union and a declaration that the united church has succeeded thereby to the rights and properties of the Methodist Episcopal Church, South, the case presents a justiciable controversy affecting property rights of great value. *Helm v. Zarecor*, 222 U. S. 32, 32 S. Ct. 10, 56 L. Ed. 77; *Smith v. Swormstedt*, 16 How. 228, 14 L. Ed. 942."

Certiorari was denied by this Court on October 12, 1942, 317 U. S. 640.

In *Helm v. Zarecor*, decided by this Court in 1911, 222 U. S. 32, the action was brought by certain ministers, ruling elders and laymen of the Presbyterian Church in the United States of America, citizens of states other than Tennessee suing for themselves and for all other members of said church against certain individual defendants as representing "The Board of Publication of the Cumberland Presbyterian Church," a Tennessee corporation. The defendants filed a plea to the jurisdiction on the ground that some of the members of The Board of Publication of the Cumberland Presbyterian Church were in sympathy with the plaintiffs and that the corporation was not made plaintiff and if it were made plaintiff no diversity of citizenship would exist to give the federal court jurisdiction. This Court held that the trial court was under a duty to determine whether there was the requisite diversity of citizenship and to arrange the parties with respect to the actual controversy, but held that the Board of Publication of the Cumberland Presbyterian Church, a corporation, was itself a mere instrumentality or titleholder, and that the fundamental question involved was the right of the religious society claiming the beneficial use and control of the corporate agency. This case is cited for the purpose of showing that the mere fact that the property of the City Church is held in the name of a corporation does not defeat the right of the Kansas Synod to control the same under the organic laws of the Church.

The right of a superior judicatory within a church organization, such as the United Lutheran Church in America, to maintain an action to prevent the diversion of church property, was directly passed on by the Supreme Court of South Dakota in 1941 in *Presbytery of Huron et al. v. Gordon et al.*, 300 N. W. 33.

In that case the Murdock Memorial Church of Bancroft, South Dakota, was a religious corporation organized under the statutes of South Dakota, and was located within the boundaries and under the jurisdiction of the Presbytery of Huron, a Presbytery of the Presbyterian Church of the United States of America, and had been for many years. The title to the church property of the Murdock Memorial Church was held in the name of the corporation. In 1936 difficulties arose in the congregation and at a congregational meeting a resolution was enacted by the entire congregation present, except three members, to withdraw the Murdock Memorial Church from the Presbyterian Church of the United States of America and sever its relation with the Presbytery of Huron. This action was taken without the consent of the Presbytery, or any superior body of the Church, and when notice of the action was served upon the Presbytery it passed a resolution demanding possession of the Church, which was refused by the pastor and Session of the Murdock Memorial Church. This action was instituted by the Presbytery against the pastor and the officers of the Session of the Church to enjoin interference with the use of the church property by members remaining loyal to the Presbytery. The action was defended on the ground that the plaintiff,

the Presbytery of Huron, was not beneficially interested in the property held by the local religious corporation and was not entitled to maintain the action. The Supreme Court, in its opinion, held:

Although the 'Murdock Memorial Church of Bancroft' is a separate corporation, it is not an independent entity. Neither is it 'the Church'. It is but an organism of the temporal body of the church. 'In its relation to the church it is not a spiritual agency with powers to preach the Gospel and administer the sacraments but a humble secular handmaid whose functions are confined to the creation and enforcement of contracts and the acquisition, management and disposition of property.' 'Nature of American Religious Corporations' by Dr. Carl Zollman, 14 Mich. Law Review 37. This distinction between the 'Church' on the one hand, and the society or corporation on the other, as its temporal body, has been recognized by this court. *Reinke v. German Evangelical Lutheran Trinity Church*, 17 S. D. 262, 96 N. W. 90; *State ex rel. Chamberlain v. Hutterische Bruder Gemeinde et al.*, 46 S. D. 189, 191 N. W. 635. Whether the corporation swallows up the society or exists separate and apart from the society, its significant status as the temporal body, or an organism of the ecclesiastical body, remains."

\* \* \* \* \*

"It also follows that the Presbytery of Huron, as a subordinate body of the Church, charged with admitted responsibilities upon its behalf in the particular territory in which Bancroft is located, has an interest in the property of the Church and may complain of its diversion from the use to which that property has been dedicated. *Gibson et al. v. Trustees of*

*Pencader Presbyterian Church in Pencader Hundred et al.*, Del. Ch., 10 A. (2d) 332.”

To the same effect in *Gibson et al. v. Trustees of Pencader Presbyterian Church in Pencader Hundred et al.*, 10 Atl. (2d) 332, where it was stated in the syllabus:

“Where religious corporations holding property of local congregations affiliated with Presbyterian Church in the United States seceded from national organization and proposed to use property in connection with new and different religious organizations, members of national organization could file bill to enjoin such use, regardless of rights of members of local congregations, whose properties were involved.”

All courts since the decision of this Court in *Watson v. Jones*, *supra*, have recognized that in a church organization of this kind that whenever the question of discipline, or faith, or of ecclesiastical rule, constitution, or law, has been decided by the highest of the church judicatories to which the matter has been carried, the legal tribunals must accept such decision as final and binding upon them.

The Circuit Court of Appeals ignored the resolution and pronouncements of the Kansas Synod (R. 12-18) wherein it specifically held in numerical paragraph 10 (R. 17) that the City Church is an integral part of the Kansas Synod and that the Kansas Synod as the general superior ecclesiastical body has a direct, inherent, and organic interest in such Church, and that the City Church must forever remain a part of it, except where its connection may be severed by mutual consent.

If the rule laid down in *Watson v. Jones, supra*, is to be followed, the Circuit Court could not disregard the judgment of the Kansas Synod wherein it held that the City Church was an integral part of the Kansas Synod and that the Kansas Synod had an direct, inherent and organic interest in the City Church.

We submit therefore that the Circuit Court of Appeals erred in holding that the Kansas Synod had no beneficial interest in the property of the City Church sufficient to maintain this action. Its opinion was in direct conflict with the principles laid down in *Watson v. Jones, Barkley et al v. Hayes et al., Purcell et al v. Summers et al., supra*, and other cases cited herein.

**The City Church is under obligation to make payments to the Kansas Synod under its constitution.**

The Circuit Court of Appeals in holding that the City Church is not under any legal or actionable obligation to make payments to the Kansas Synod completely ignored Section 2, Article VIII, of the Constitution of the Kansas Synod, *supra*, which reads:

“Every congregation belonging to the Synod, as it has a share in all its acts and supervisions, shall comply with the Constitution, By-Laws, decisions and recommendations of the Synod and local Conference, and conform to its public worship and ministrations to the order used by the United Lutheran Church in America and approved by the Synod. It shall observe and make systematic effort to meet at least the apportionment for all objects to the Treasurer of Synod, and afford to all its members a regular channel of contributions for the benevolent operations of the church,

the minimum amount being indicated by a budget of apportionment by Synod to the congregation. It shall make earnest effort to pay such amounts into the Synodical Treasury in monthly installments. It shall make due and liberal provisions for the ministration of the Word and the Sacraments, endeavor to hold at least one service every Lord's Day and see that the pastor is properly supported; and make all necessary provision for the promotion of piety in its families and for the Christian training of the young."

While no penalty is provided by this provision of the constitution for failure to make payments to the Synod, certainly the command that it meet at least the amount of its apportionment, as provided by the Synod, leaves no alternative for the congregation but to make such payments.

No case in the civil courts has been found whereby an action has been instituted by a superior body within an organization of this kind to collect payments due, but reason dictates in the absence of court decisions that an organization such as the United Lutheran Church in America, having more than a million and a half members, could not long exist if the individual congregations were allowed to disregard the obligation they assume under the above quoted provision of the constitution; and we submit that the City Church by this provision is under the legal duty to afford its members a regular channel for contributions to the Church, and once the contributions are collected the City Church is under a legal obligation to pay the apportionment so collected into the treasury of the Synod.

**The Kansas Synod has a right to maintain this action.**

The Circuit Court of Appeals held that the Kansas Synod had no beneficial interest in the property held in the name of the City Church and that the City Church was under no legal or actionable obligation to make payments to the Kansas Synod for benevolences, and therefore the Kansas Synod had no rights violated by the change in the synodical affiliation of the City Church which would entitle it to maintain the action.

As has already been shown, the church judicatory has held that it has a direct, inherent and organic interest in such church, which judgment is binding upon the civil court. As has been shown, this Court in *Watson v. Jones*, *Shepard et al. v. Barkley et al.*, and the Circuit Court of Appeals for the Fourth Circuit in *Purcell et al. v. Summers et al.*, *supra*, have recognized that the superior church judicatory in a church organization of this kind, has a beneficial interest in the property of the local church, even though it is held in the name of a corporation, sufficient to maintain an action to prevent its diversion.

It is submitted that the City Church being under the jurisdiction and control of the Kansas Synod—the superior judicatory within the United Lutheran Church in America—it is bound by the constitutional provision herein cited, and by the custom and usage of the church, to make payments and support the Kansas Synod in its benevolent functions; and it is submitted that the City Church is under a legal obligation, as provided by the constitution of the Kansas Synod, to make payments for the support of

the Kansas Synod. It being admitted that the value of the City Church property is \$65,000.00, and further admitted that payments made by the City Church to the Kansas Synod in a five-year period amounts to more than \$7,000.00, and it being admitted that diversity of citizenship exists, the Federal Court has jurisdiction and the Kansas Synod has the right to maintain this action.

### CONCLUSION

The opinion and judgment of the Circuit Court of Appeals in dismissing this action is an adjudication that the City Church is independent in character and is under no obligation to the superior judicatories within the United Lutheran Church in America. And although the organization of the United Lutheran Church in America has existed for more than twenty years under a written constitution, and the Kansas Synod has existed more than fifty years under a written constitution, and the City Church has existed more than forty years under a written constitution and under the jurisdiction of the Kansas Synod, all of which constitutions bind these organizations into one compact and unified church, and provide for reciprocal obligations between the bodies, the opinion and judgment of the Circuit Court of Appeals, in effect, adjudges that the organic law of the Church as set forth in the respective constitutions has no binding force or effect in an action in a civil court to prevent the diversion of the church property, and that the City Church may disregard all of its ecclesiastical connections and obligations

by a vote of a plurality of the members of its congregation and divert its property from the use to which it is dedicated under the organic law of the Church.

It is submitted, if the City Church may disregard its obligation under the organic law of the Church and divert its property, that all other churches within the jurisdiction of the Kansas Synod may do likewise. It is submitted that if the churches within the jurisdiction of the Kansas Synod may divert their property, that the Kansas Synod may in turn divert its property from the United Lutheran Church in America, and that all other Synods composing the United Lutheran Church in America may do likewise. In effect, the opinion of the Circuit Court of Appeals, if allowed to stand, may well be a stepping-stone to the complete disorganization of 3980 congregations which are combined to make up the United Lutheran Church in America.

It is respectfully submitted that the petition for a writ of *certiorari* should be granted.

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